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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re the Marriage of ROBERT M. MEAD and
CAROLYN INEZ WILLIAMS-MEAD.

C082278

ROBERT M. MEAD,

(Super. Ct. No. 03FL03504)

Appellant,

v.

CAROLYN INEZ WILLIAMS-MEAD,

Respondent.

After 12 years of marriage, appellant Robert M. Mead (Robert) and respondent Carolyn Inez Williams-Mead (Carolyn) divorced. The divorce settlement spawned lengthy, acrimonious litigation, including three prior appeals to this court. (*In re Marriage of Mead and Williams-Mead* (Nov. 1, 2007, C052999) [nonpub. opn.] (*Mead D*); *In re Marriage of Mead and Williams-Mead* (Sept. 17, 2012, C065718) [nonpub. opn.]

(*Mead II*); *In re Marriage of Mead and Williams-Mead* (Aug. 6, 2014, C073814) [nonpub. opn.]..)

The saga continues. Previously, the trial court issued an order for appearance and examination of judgment debtor Robert to aid in the collection of a \$50,000 equalizing payment to Carolyn. Robert filed a motion to vacate the examination and a motion to vacate the underlying judgment. We affirmed the trial court's denial of both motions. (*Mead II, supra*, C065718.) Subsequently, in order to collect on the judgments and orders of the trial court, Carolyn filed a notice of levy on Robert's bank accounts at Charles Schwab. Robert filed a claim of exemption on two Charles Schwab accounts. The trial court denied the claim of exemption. Robert, proceeding in pro. per., appeals the denial of his claim. We shall affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND¹

The couple married in 1992. Exactly 12 years later to the day, on December 9, 2004, they stipulated in court to the terms of a marital settlement agreement (agreement). Both were represented by counsel.

The court ascertained that Robert understood the terms of the agreement and stated the agreement was enforceable as a judgment under Code of Civil Procedure section 664.6.² The dissolution judgment incorporating the agreement was filed on March 8, 2005.

Three months after stipulating to the agreement, Robert had not signed a formal marital settlement agreement. At a compliance review hearing in March 2005 the court entered judgment under section 664.6. The court adopted the agreement prepared by

¹ Some of the following facts are taken from our previous opinions in *Mead I, supra*, C052999 and *Mead II, supra*, C065718.

² All further statutory references are to the Code of Civil Procedure unless otherwise designated.

Carolyn's attorney. Robert had signed this agreement, writing next to his signature, "under judicial order." Robert claims the court clerk told him the court ordered him to sign the agreement. A veritable blizzard of litigation followed.

Notice of Levy and Claim of Exemption

On March 2, 2016, Carolyn filed a notice of levy. The notice described the property to be levied upon, including three Charles Schwab bank accounts, which we will refer to by abbreviated numbers, 8100, 6038, and 0424. The levy was made in accordance with section 700.140 or 700.150. The amount necessary to satisfy the judgment was \$290,343.04.

On March 11, 2016, Robert filed a claim of exemption on Charles Schwab account Nos. 8100 and 6083 under sections 704.110 and 704.115. According to the claim, account No. 8100's deposits are "derived from the State of California public retirement benefit and the funds in account . . . 6038 are an IRA saving account as described in CCP section 704.115." Account No. 8100 contained \$31,319.13 Account No. 6038 contained \$35,831.74.

Carolyn filed a notice of hearing and opposition to the claim of exemption on March 22, 2016. The opposition noted Robert retired as a federal employee in December 2015. As to account No. 8100, the opposition argued the supporting documents provided by Robert failed to meet the burden on the exemption claim. The opposition also argued Robert failed to offer any evidence explaining the need for the money saved, unspent, and accumulating in account No. 6038. "The IRA account . . . is exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment

debtor when the judgment debtor retires. No need is shown. The [j]udgment [d]ebtor has no spouse or dependents.” Robert filed a reply.³

Following a hearing, the trial court issued an order denying Robert’s claim of exemption. The order states: “The following property must be applied to the judgment . . . cash and securities in Schwab account no. XXXX-6038 (Roth Contributory IRA in the name(s) of Robert McKenzie Mead) and cash and securities in Schwab account no. XXXX-8100 (a Schwab One Brokerage Account in the name(s) of Robert McKenzie Mead).” Under “Other,” the order states: “Schwab is to liquidate the securities in accounts XXXX-6038 and XXXX-8100, convert the securities to cash, and deliver the existing cash and cash from the sale of securities to the Los Angeles County Sheriff.” Robert filed a timely notice of appeal.

DISCUSSION

I

Standard of Review

We begin by noting that, on appeal, a judgment of the trial court is presumed correct. We presume the trial court followed the applicable law; the burden is on the appellant to demonstrate otherwise. (*In re D.W.* (2011) 193 Cal.App.4th 413, 417-418.)

Robert has elected to proceed on the clerk’s transcript. (Cal. Rules of Court, rule 8.121.) This is referred to as a “judgment roll” appeal. (*Allen v. Toten* (1985) 172 Cal.App.3d 1079, 1082.) It is the burden of the party challenging a judgment to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) When an appeal is “on a judgment roll,” we must conclusively presume evidence was presented that is sufficient to support the court’s findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154.) Our review is limited to

³ During these proceedings Robert was represented by counsel.

determining whether any error “appears on the face of the record.” (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521; see Cal. Rules of Court, rule 8.163.) The rules of appellate procedure apply to Robert even though he is representing himself on appeal. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.)

II

Charles Schwab Account No. 8100

Robert argues the trial court erred in denying his claim of exemptions on state retirement funds in account No. 8100, because such funds are fully exempt from judgment under section 704.110.

Background

A judgment creditor may enforce a money judgment by levying the deposit account of the judgment debtor. (§§ 699.710, 700.160.) After the creditor levies a judgment debtor’s deposit account, the debtor may claim the funds levied as exempt from the enforcement of the judgment. The exemption claimant bears the burden of establishing the exemption. (§§ 703.010, 703.020, 703.080, subd. (b); *Kilker v. Stillman* (2015) 233 Cal.App.4th 320, 330.)

All property of a judgment debtor is subject to a money judgment unless it falls within a statutory exemption. Such exemptions allow the debtor to keep property for the protection of the debtor and the debtor’s family. (§§ 704.010-704.210; *Ford Motor Credit Co. v. Waters* (2008) 166 Cal.App.4th Supp. 1, 8.)

Funds derived from paid earnings which can be traced into deposit accounts are exempt. Deposit accounts containing funds from Social Security and public benefits are also exempt. (§§ 704.070, 704.080.) The party claiming the exemption bears the burden of tracing an exempt fund. (§ 703.080, subd. (b).)

Discussion

Robert argues the facts disclose that the funds in account No. 8100 were public employee benefits as shown by the deposit documentation he provided the court. Carolyn disputes the accuracy and veracity of the documents Robert produced. The trial court, by finding the funds in account No. 8100 not exempt, accepted Carolyn's characterization of Robert's evidence.

Robert argues only pension funds were deposited into account No. 8100. However, Carolyn challenges this assertion by noting the documentation provided, an unauthenticated computer printout, showed 11 deposits from April 1, 2014, through February 15, 2015, totaling \$24,545.64. Yet the account balance in February 2015 was as high as \$65,000. According to Carolyn, "It is clear from the single bank statement provided by Mead that funds other than State Retirement Pension are or were in the account. The retirement funds, if deposited, were commingled with other funds. The source of the \$40,000 difference is unexplained."

Carolyn contends: "Mr. Mead does not mention the mode of record preparation, the completeness of data entry. There is nothing in the record to indicate Mr. Mead used proper procedures to obtain the computer bank record or that he used proper search and retrieval techniques. There is nothing to establish the record's basic trustworthiness of Mr. Mead's documents and, hence, their admissibility." Carolyn points out that Robert did not provide traditional bank statements, which are prepared daily and consist of debit and credit entries.

Robert's response is unpersuasive. Robert states: "A strawman argument presented by the Respondent is that other funds were deposited to the Schwab account. The evidence of the Schwab deposit account list of deposits to the account did not show other deposits and Respondent's request is to prove the negative. The evidence sought by Respondent would require testimony or declaration from the institution or CalPERS that no other funds were deposited and presume that Petitioner's declaration was perjury.

Further, the printout ‘pension deposits for all dates’ would have to be adjudged a forgery. [¶] This procedure would place an undue burden on CalPERS, financial institutions and the Courts to establish the non-existence of an allegation based on an Opposition to Exemption that is unsworn and presents no substantiating facts to the contrary.”

Based on the record before us, we cannot evaluate Robert’s claims concerning the evidence before the trial court. We must presume the evidence presented at the hearing was sufficient to support the trial court’s findings. (*Ehrler v. Ehrler, supra*, 126 Cal.App.3d at p. 154.)

III

Charles Schwab Account No. 6038

Robert argued he was entitled to an exemption for account No. 6038 because it contained a Roth IRA necessary for his support. The court disagreed. Robert bears the burden of establishing the exemption. (§ 703.580, subd. (b).)

Background

“If property is claimed as exempt pursuant to a provision exempting property to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor, the claim of exemption shall include a financial statement.” (§ 703.530, subd. (a).) The financial statement shall be executed under oath, and include all sources and amounts of earnings and other income, a list of assets, and all outstanding obligations. (§ 703.530, subd. (b).)

“The claim of exemption is deemed controverted by the notice of opposition to the claim of exemption and both shall be received in evidence. If no other evidence is offered, the court, if satisfied that sufficient facts are shown by the claim of exemption (including the financial statement if one is required) and the notice of opposition, may make its determination thereon. If not satisfied, the court shall order the hearing

continued for the production of other evidence, oral or documentary.” (§ 703.580, subd. (c).)

Discussion

In support of his request for exemption, Robert filed a financial statement. The trial court held account No. 6038 was not exempt from the judgment.

On appeal, Carolyn provides a critique of the financial statement. Carolyn argues: “Giving due deference to the determination of the trial court, the record before this court would support an implied finding that Mr. Mead acted with a ‘fraudulent purpose’ in submitting his claim of exemption. The court could also consider on the question of Mr. Mead’s honesty and fair dealing, his earlier failure to identify and disclose assets, savings, other sources of income, and equity in his house. More tellingly, the court could determine the entry of \$0 for real estate equity, the failure to give his Thrift Savings bank account balance of half a million dollars, together with Mr. Mead’s claim of ongoing expenses in an amount almost twice his claimed income from all sources, constituted circumstantial evidence that the claim of exemption and financial statement did not present an honest or fair picture of his real financial state.”

Robert responds by disputing Carolyn’s gloss on the financial statement. Again, we are bound by the standard of review on a judgment roll appeal. (*Ehrler v. Ehrler*, *supra*, 126 Cal.App.3d at p. 154.)

Robert also asserts that there is no evidence that the trial court applied the factors codified in *In re Moffat* (Bankr. 9th Cir. 1990) 119 B.R. 201, and therefore the court committed legal error. In *In re Moffat*, the court provided factors to be considered in determining what is reasonably necessary for the support of the debtor: (1) the debtor’s present and anticipated living expenses and income; (2) the age and health of the debtor and his or her dependents; (3) the debtor’s ability to work and make a living, including his or her training, skills, and education; (4) the debtor’s ability to save for retirement;

and (5) any special needs of the debtor and his or her dependents. (*Id.* at p. 206.) We are constrained by the record before us which does not allow us to presume what the court did or did not consider in finding account No. 6038 was not exempt.⁴

IV

Vagueness Challenge

Robert contends section 704.115, subdivision (e) is unconstitutionally vague. Section 704.115, subdivision (e) outlines the standard for an exemption as “exempt only to the extent necessary to provide for the support of the judgment debtor when the judgment debtor retires and for the support of the spouse and dependents of the judgment debtor, taking into account all resources that are likely to be available for the support of the judgment debtor when the judgment debtor retires.”

Robert argues “when the judgment debtor retires” is vague “as to whether it denotes a point in time or a period of time or even an age.” He also faults the phrase to “the extent necessary to provide for the support of the judgment debtor . . . spouse and dependents” as vague and providing no standard. However, Robert cites numerous cases interpreting and applying the reasonably necessary test. Moreover, Robert provided a declaration and points and authorities aimed at satisfying the requirements he now claims are vague.

To find a civil statute void for vagueness, the statute must be so vague and indefinite as to amount to no rule or standard at all. (*Seniors Civil Liberties Ass’n. v. Kemp* (11th Cir. 1992) 965 F.2d 1030, 1036.) We are not persuaded that section 704.115, subdivision (e) meets this standard.

⁴ We deny Carolyn’s request for judicial notice filed January 6, 2017.

DISPOSITION

The judgment is affirmed. Carolyn to recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

RAYE, P. J.

We concur:

ROBIE, J.

RENNER, J.